IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/11/2004

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THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.No. 19769 of 2001
and
W.P.No. 35667 OF 2002

A.Thangavelu .. Petitioner in
both the WPs.

-Vs-

1. The Appeals Committee,
rep. by its Chairman,
Coimbatore City Municipal Corporation,
Coimbatore.

2. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore. ... also R1 in
WP No.35667 of 2002

3. Karthikeyan, I.A.S.,
Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

4. A.Rajendra Kumar, I.A.S.,
formerly Commissioner,
Corporation of Coimbatore,
now Chief Executive Officer,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Chennai-600 008. ... also R2 in
WP No.35667 of 2002
5. Dr.Subramani,
Formerly City Health Officer,
Enquiry Officer,
Corporation of Coimbatore,
now Deputy Director of Health Services,
Salem. ... also R3 in
WP No.35667 of 2002
6. The Secretary to Government,
Municipal Administration &

Water Supply Department,
Fort St.George, Chennai-9. .. Only as R4 in
WP No.35667 of 2002
... Respondents

These Writ Petitions filed under Article 226 of The Constitution of India to issue a Writ of Certiorari, for the reliefs as stated therein respectively.

For petitioner : Mr. R.Thiyagarajan, SC &
Mr. Vijay Narayan, SC

For respondents : Mr. R.Sivakumar for R1toR3
Mr. R.Chandrasekaran,GA-R4

:COMMON ORDER

The petitioner is common in both these Writ Petitions.
2. In W.P.No.19769 of 2001, the petitioner seeks to challenge the order of the Appellate Authority, Coimbatore City Municipal Corporation dated 17-9-2001, in and by which, the petitioner's appeal against the order of punishment of dismissal came to be rejected.
3. In W.P.No.35667 of 2002, the petitioner seeks to challenge the initial order of dismissal dated 31-12-1999.
4. The brief facts which are required to be stated are, that the petitioner was employed as a Town Planning Inspector in Pollachi Municipality and at the relevant point of time, he was holding additional charge as Assistant Town Planning Officer. There was a complaint as against the petitioner dated 13-8-1978 in regard to the clearance of layout papers submitted by the owners M/s.Radhakrishnan and Mrs. Soundarajothi in T.S.No.288/1D/1E of Vilankurchi village stating that the petitioner demanded a sum of Rs.50,000/- for the approval of the layout. The said layout was stated to have been cleared and sanction made on 14-8-1997. Pursuant to the said complaint, the petitioner was issued with a charge memo dated 13-12-1997, in which, the following three charges were levelled against the petitioner.
Charge 1:
Thiru A.Thangavelu, Town Planning Inspector and Asst.Town Planning Officer (in-charge) North Zone demanded Rs.50,000/- from the agent of Thiru Radhakrishnan and Soundarajothi for approval of layout in T.S.No.288/1D/1E of Vilankruchi village.
Charge 2:
By such demand, you have committed dereliction of duty.
Charge 3:
By such action you have caused bad name to the Corporation."

5. The petitioner submitted his explanation on 5-1-1998, thereafter an enquiry was ordered to be held by the City Health Officer and the enquiry was posted on 19-4-1998. On the date of the enquiry, the petitioner is stated to have made a request for examining seven witnesses on his side. The said request of the petitioner was not acceded to and simultaneously the Enquiry Officer submitted his report on the same day. In

the said report, the Enquiry Officer concluded that while the demand of money by the petitioner was not fully proved the said allegation cannot also be ignored totally.

6. Thereafter, the Disciplinary Authority, namely, the Commissioner issued a notice to the petitioner on 27-4-1998 along with the report of the Enquiry Officer dated 19-2-1998 and called upon the petitioner to submit his reply. The petitioner submitted his reply on 25-5-1998, wherein, he took the stand that Enquiry Officer's report cannot be acted upon inasmuch as no full proof enquiry was held. He also stated that unless the witnesses w hom he wanted to examine in the enquiry were summoned and examined, the petitioner will not be able to submit his full-fledged explanation.

7. Be that as it may, it is stated that there was a complaint against the Coimbatore City Corporation as regards certain serious irregularities in the execution of development work in an un-approved layout called "Varadharajulu Nagar" in Coimbatore. With reference to the said episode, it appears that the Council of Coimbatore Corporation wanted a detailed report and the petitioner was asked to submit his report.

8. On a perusal of the files produced before this Court, it transpires that the petitioner submitted his report dated 3-7-1998, wherein he pointed out that the said development works were undertake without getting proper sanction from the concerned authorities.

9. In the above stated background, the petitioner was issued with the order of suspension dated 18-8-1998 by the then Commissioner of Corporation of Coimbatore which was again based on the charge sheet already issued to the petitioner. The petitioner is stated to have challenged the said suspension order in W.P.No.19768 of 1998 and also obtained stay of the suspension order dated 18-8-1998. As there was alleged violation of the order of interim stay, contempt proceedings were also taken and ultimately, the petitioner was allowed to join duty on 13-11-1998. In the Contempt Application No.498 of 1998, the then Commissioner of the Coimbatore Corporation was found guilty in the order dated 1-7-1999. However, he was admonished by administering a strict warning. In the mean time, the Enquiry Officer is stated to have resurrected the enquiry by his letter dated 16-12-1998. The hearing was posted on 16-7-1999. In the said enquiry also, the petitioner participated and after examination of certain witnesses, the enquiry was closed on 27-7-1999. The Enquiry Officer submitted his subsequent report on 29-7-1999. The petitioner was called upon to submit his further explanation to the report of the Enquiry Officer by proceedings dated 30-7-1999. Once again by letter dated 9-8-1999 and 23-9-1999, the petitioner wanted the examination of all the witnesses whom he wanted to examine and also give him an opportunity to examine the concerned complainants who were not offered for cross-examination earlier. The petitioner is also stated to have submitted his explanation on 23-8-1999 and thereafter by proceedings dated 17-9-1999, a second show cause notice was issued proposing the punishment of dismissal.

10. The said second show cause notice was challenged by the petitioner which was dismissed by the learned Single Judge of this Court by order dated 16-7-1999 in W.P.No.15898 of 1999. Against which, the petitioner preferred a Writ Appeal in WA No.2031 of 1999 and the Division Bench, by order dated 9-11-1999, also confirmed the order of the learned Single Judge.

However, the Division Bench while dealing with the claim of the petitioner as regards a tape recorded conversation of the petitioner and the Enquiry Officer, held as under in paragraphs 6 and 7:

"6. However, learned Senior counsel for the appellant had contended that one particular aspect of the points taken by the writ petitioner had been foreclosed by the observations of the learned single Judge in his order. This is in the context of the allegation of the writ petitioner that he had talked to the Enquiry Officer over telephone and that he was informed by him that the enquiry report was not prepared by him. In this context, the petitioner had made elaborate allegations in paragraph No.14 of his affidavit and he would also state that the conversation had been taped by him and the same was available with him. He was ready to produce the same for being displayed before the learned single Judge. But a counter has been filed separately by the second and third respondent in this Writ Appeal dealing with the allegations contained in the affidavit filed in support of the writ petition. In both the counters the alleged telephonic conversation had been denied. But even so, learned senior counsel for the appellant asserts that the allegations are true and that the appellant was prepared to subject himself to any mode of proof as may be directed by this Court including the tape being sent to Forensic Expert to verify genuineness. He would also state that by a series of judgments, the Supreme Court had held that tape recording would be an admissible evidence, but the learned single Judge, without a detailed enquiry on the said issue had recorded a finding that the contention of the petitioner cannot be countenanced. The context in which the taperecording is sought to be relied upon does touch upon an issue which would be relevant for a decision in the dispute between both the parties. If the allegation that the Enquiry Officer had admitted that the enquiry report was prepared by some one else and that he had merely signed it, is proved, it would vitiate the entire enquiry proceedings. But at the same time, we do not propose to adjudicate upon the said allegation at the stage of show-cause notice. It is open to the appellant to put forth his submissions including the facts allegedly elicited by him through the telephonic conversation and about his having recorded his conversation, it is up to the appropriate authority to deal with the said submissions and in the event of all the allegations of the petitioner being disbelieved, it is always open to the appellant to approach this Court. The appellant is not precluded from establishing the genuineness of the alleged tape-recording before this Court in the event of respondents rejecting the issue so raised by the appellant.

"7. With the above observation, the writ appeal is dismissed and the appellant is given a further period of 15 days to submit his explanation from the date of receipt of copy of this judgment. No costs. Consequently, connected C.M.P. is also dismissed."

11. In such circumstances, when the petitioner submitted his explanation on 24-11-1999 along with the transcript of the conversation between him and the Enquiry Officer, the Disciplinary Authority asked the petitioner to produce the audio cassette by its proceedings dated 1 3-12-1999. The petitioner also sent the audio cassette on 15-12-1999 .

12. Having regard to the Division Bench order dated 9-11-1999 in W.A.No.2031 of 1999, the Disciplinary Authority forwarded the audio cassette to the Forensic Department, Chennai, which was returned by the said

Department stating that they were not taking up such cases for examination. Ultimately, the petitioner was issued with the impugned order of dismissal dated 31-12-1999 without proper sending of the tape recorded conversation.
13. When the petitioner preferred a Writ Petition in W.P.No.678 of 2000 as against the order of dismissal dated 31-12-1999, the same was dismissed pointing out that the petitioner can work out his statutory right of appeal. That order was dated 20-1-2000. Thereafter, the impugned order of the appellate authority dated 31-8-2000 came to be passed confirming the order of dismissal. As against the above orders, the petitioner has preferred the present two Writ Petitions.
14. When these Writ Petitions came up for hearing earlier, on finding the observations of the Division Bench contained in the order dated 9-11-1999 in W.A.No.2031 of 1999 and also on noting that neither the Disciplinary Authority nor the Appellate Authority have duly carried out the exercise as regards the consideration of the recordings contained in the audio cassette, I felt it appropriate to get it done through proper source. Therefore, an order came to be passed on 21-11-2 003 appointing an Advocate Commissioner the whom the task of decoding the recordings contained in the tape recorder cassette filed by the petitioner and the genuineness of the conversation as between him and the Enquiry Officer was entrusted. The Advocate-Commissioner was also directed to approach either the Central Bureau of Investigation or the Indian Institute of Technology or any other authority for carrying out the said exercise. The Advocate Commissioner has submitted his report dated 11-10-2004 along with the report of the Indian Institute of Technology, Chennai.
15. A perusal of the Report of the Advocate-Commissioner disclose that while seeking for the report of the authorities of the Indian Institute of Technology, whatever procedure and formalities to be followed were duly followed and all the opportunities required to be extended to the petitioner, to the Disciplinary Authority as well as the Enquiry Officer were also duly extended. On a perusal of the Advocate-Commissioner report, I am convinced that due opportunities were given to all the parties concerned while getting the report from the Indina Institute of Technology, Chennai.
16. The Registrar of the Indian Institute of Technology has submitted his report, which reads as under:-
"REPORT
September 24,2004

Ref : W.P. 12187/96 and
W.P.No.19769/2001 order
dated 21.11.2003 by the Hon.High Court of Madras.

Sub : Report on the Speaker Verification.

We were provided with three micro audio cassettes, henceforth referred to as C1 (Subject A), C2 Subject B),C3 Subject C). From C1, we considered for speaker verification, the conversations between Mr.A. Thahgavelu (henceforth referred to as Speaker1) and Dr.Subramani (henceforth referred to as Speaker2), reported to have taken place on two different dates, one in the last week of July and the other in the second week of August, respectively (henceforth referred to as Session 1 and Session 2, respectively).

From c2, we have considered the conversation between Mr. Arumugam (henceforth referred to as Speaker3) and Speaker1), and between Mr. Arumugam and Speaker2. From C3 we considered the conversations between Speaker1 and Speaker2 (of the same text as in Session1 and Session2, respectively). The cassettes were accompanied with the transcripts in Tamil of Session1 and Session2 of C1.

Analysis was performed to verify if the Speaker2 on C1, C2 and Cr3 were the same.

Analysis of Data:

The durations of voice data considered for analysis from each cassette are given below:

Cassette No	Session No	Duration
C1	1	7.93 min
C1	2	3.76 min
C2	1	0.71 min
C2	2	0.64 min
C3	1	10.98 min
C3	2	4.28 min

The duration of voice data was adequate for the analysis. The noise level caused by environment, channel, recording equipment etc. was different on C1, C2 and C3. The transcripts, though helpful, were not considered in our analysis.

Considering the quality and quantity of the data made available to us, we performed auditory and technical identifications tests.

Auditory identification was done by an expert linguist by applying listening skills and by employing techniques for visualization and acoustic measurements of the voice data. The employing techniques for visualization and acoustic measurements of the voice data. The linguistic and dialectal features, style, prosodic parameters speaker responses, filler pauses in dialogue, syllables and segments were examined. The studies indicate that the two speakers in Session1 and Session2 of C1 are same as in C2 and C3. A third speaker is present in C2, as mentioned earlier.

Technical identification tests include comparing the acoustic characteristics of speech of Speaker1 and Speaker2 in C1 with the models of each of the 3 speakers built with the data in C2. The comparison was made only with these three, as the data was available only for these three speakers. The results show that the data of Speaker2 matched with the model of Speaker2 better than with the models of the other two (Speaker1 and Speaker3). The results were also true for the Speaker2 data in both the sessions in C1.

To check the above method of comparison, the speech data of Speaker1 for both the sessions in C1 was compared in a similar manner with the same models of each of the speakers built with the data in C2. In this case the match was better with the model for Speaker1 than with the models of the other two (Speaker2 and Speaker3).

Further check was made by building models with the date in C1, and

testing with the data in C2. The match is better between the date of the same speaker, compared to the cross-speaker comparison. This test is not normally required, as the data in C1 is the contested one. But we have done this only to obtain additional support to the evidence obtained by comparing the data in C1 with the models built with the data in C2.
On careful observation, we notice that the quality of data recorded in C3 was very poor and hence it was ignored for technical evaluation.
Conclusion:
Based on the results obtained on various tests performed on the voice data supplied to us, we conclude that the Speaker2 is the same person in all the three cassettes C1, C2 and C3."
Sd/-xxxx,
Registrar,
Indian Institute of Technology,
Chennai.

17. Mr.R.Sivakumar, learned counsel appearing for the Disciplinary Authority as well as the Enquiry Officer submitted his objections to the Report of the Indian Institute of Technology authorities and his objections were three fold.
18. The learned counsel contended that while considering the correctness of the recordings contained in the audio cassette, the Indian Institute of Technology did not carry out any exercise to find out the truthfulness or genuineness of C1 cassette, that the report contains contradictory statement of facts apart from the fact that it was self-contradictory in nature and that in the absence of the identity of the Experts based on whose analysis, the report was submitted by the Registrar of Indian Institute of Technology, no credence can be attached to the said report.
19. Though the learned counsel attempted to pick-holes in the manner in which the Indian Institute of Technology Authorities made the analysis of the recordings contained in the C1 cassette along with the other two cassettes, namely, C2 and C3, I am not in a position to consider any of the contentions raised by the learned counsel inasmuch as, I find that neither the Disciplinary Authority nor the Enquiry Officer raised any such protest either before the Advocate-Commissioner or before the Registrar of Indian Institute of Technology with the above stated objections.
20. Though the learned counsel seeks to place reliance upon "1968 MLJ (Crl.) 247 (YSUFALLI EXMAIL NAGREE versus THE STATE OF MAHARASHTRA)" in support of his submission that the Expert's Report cannot be accepted on its face value in the absence of the report having been proved in the manner known to law, I find that such a stand of the respondents cannot be accepted in the facts and circumstances of this case. In the first place, as stated earlier, the petitioner himself submitted the audio cassette after the order of the Division Bench dated 9-11-1999 in W.A.No.2301 of 1999 when he submitted his explanation to the second show cause notice. The said cassette was very much available with the respondents, yet the respondents never thought it fit to question the genuineness of the C1 cassette now produced by the petitioner for examination by the Authorities of the Indian Institute of Technology, Chennai. Further as stated earlier, the respondents never questioned the genuineness of C1 cassette either before the Advocate-Commissioner or before

the Indian Institute of Technology Authorities or in this Court at any point of time earlier to the submissions now made at the time of hearing. Even as regards the bona fides of the Authorities of IIT who made the analysis, no motives was attributed to them. IIT being an independent State Body, its Authority have no axe to grind as against the contesting respondents or the Enquiry Officer. Therefore, when the respondents failed in their duties to make the analysis of the C1 Cassette when presented before them, they cannot now be permitted to challenge the correctness of the analysis made by the IIT Authorities. I, therefore, do not find any substance in any of the objections now raised for the first time in this Court. Moreover, the respondents never sought for the examination of the concerned Authorities after the filing of the Report. Therefore, I find that all the above objections are purely an afterthought and have been made only to defeat the rightful claims of the petitioner.

21. In any event, on a perusal of the report, I find that the socalled contradictions, namely, that the contents of sample cassettes namely, C2 and C3 contained the voice recordings of the Enquiry Officer for a limited duration and therefore, that with such a limited duration of such recordings, the Indian Institute of Technology Authorities could not have validly compared the voice with the original recordings contained in C1 cassette cannot also be accepted. I say so because even if the recordings of the voice of the Enquiry Officer contained in the sample cassettes is of lessor duration, when such recordings is available in the cassette, the concerned authorities who made the analysis could have heard such recordings by repeatedly playing the cassettes to their satisfaction before making a comparison with the original recordings contained in the C1 cassette. Even the other objections, namely, that the observation of the Indian Institute of Technology Authorities that the noise level caused by environment, channel, recording equipment, etc. as between the original cassette C1 and sample cassettes C2 and C3 was different will be of no consequence as the noise level is bound to vary when recordings are made in different cassettes in different environment. What was relevant for our consideration is the voice recording of the concerned individual whose voice is to be compared as between the original recording and the subsequent sample recording made for making such comparison. Therefore, when the recordings of such voice was made in the presence of the concerned parties and when that fact is not in dispute, the comparison made by the authorities concerned, irrespective of the variation in the noise level will be of no consequence. Yet another objection, namely that the Authorities themselves decided to ignore one of the sample cassettes, namely C3 cassette as the quality of data recorded was poor by itself will not in any way affect the report of the authorities inasmuch as apart from the said sample C3 cassette, the authorities had the original for being compared with one other sample cassette C2 which cassette contained the voice recordings of the concerned Enquiry Officer. Therefore, none of the objections raised on behalf of the respondents as regards the correctness of the report of the Indian Institute of Technology carry any weight. In any event, I am convinced that the Authorities have made earnest efforts to compare the recordings contained in C1 cassette vis-a-vis C2 and C3 cassettes when they submitted their report. It is not the case of the respondents that all the Authorities of the Indian Institute of Technology were inimically disposed of towards them and therefore, the adverse report came to be submitted. The Indian Institute of

Technology being an institution of high repute, I have no reason to doubt the genuineness of the Report submitted. When the report makes it clear that the voice data proved that the voice of the Speaker-2 found in C1 cassette was that of the Enquiry Officer, the question for consideration is as to how far any reliance can be placed upon the findings of that Enquiry Officer.

22. On this aspect when the transcript of the conversation found in the C1 cassette is perused, I find that in the couse of the conversation between the petitioner and the Enquiry Officer, the Enquiry Officer has made a categoric statement to the following effect:-

(Vernacular portion deleted)

A reading of the above referred to conversation makes it clear that the Enquiry Officer did not apply his mind at all and the so-called report was a make a believe one and the same was not genuine. In other words, the Report said to have been made by the Enquiry Officer was not his. In such circumstances any further proceedings based on the said report will have no legs to stand.

23. However, the matter does not rest there. When the stand of the petitioner is examined further, I find that while initially he was issued with the charge sheet on 13-12-1997 based on the complaint dated 13-8-1997 in the initial enquiry held on 19-2-1998, no witnesses were examined. Further a report came to be filed by the Enquiry Officer on the same day, stating that the charge was not fully proved, but yet the allegations cannot be ignored totally. When the Disciplinary Authority issued a notice to the petitioner, the petitioner insisted that unless the witnesses cited by him were examined, he will not be able to vindicate his stand. It was at that point of time, yet another episode intervened which related to the irregularities in making certain developments in the layout called 'Varadarajulu Nagar' which was admittedly an un-approved layout. The petitioner would therefore, claim that since he submitted a report as regards the irregularities concerning the said layout in his report dated 3-7-1998, the then Commissioner was ill-disposed towards him which resulted in reopening the enquiry by placing the petitioner under suspension on 18-8-1998. The enquiry which was reopened was subsequently proceeded with which ultimately resulted in the passing of the orders impugned in these Writ Petitions.

24. Assailing the orders impugned, M/s. R.Thiagarajan and Vijay Narayan learned senior counsel appearing for the petitioner in these two Writ Petitions would contend that when once the report of the Enquiry Officer has been found to have come into existence under mysterious circumstances, the whole disciplinary proceedings got vitiated and therefore, nothing more should take place except setting aside the orders and granting the petitioner the relief of reinstatement with all other consequential benefits. Reliance was placed upon the decisions reported in "AIR 1969 SC 48 (ORIENT PAPER MILLS LTD. Versus UNION OF INDIA), 1999(3) SCC 679 (CAPT.M.PAULANTHONY versus BHARAT GOLD MINES LITD. AND ANOTHER), 2004(1) SCC 43 (UNION OF INDIA versus MADHUSUDAN PRASAD) and "AIR 1996 SC 1669 (STATE BANK OF PATIALA AND OTHERS versus S.K.SHARMA)".

25. According to the learned Senior counsel, apart from the fraudulent practice adopted by the Enquiry Officer in the preparation of his report, they also contended that even in this Court, the respondents have not

come out with the true facts. It was pointed out that when the fact as regards the report submitted by the petitioner on 3-7-19 98 in relation to the irregularities concerning 'Varadarajulu Nagar' layout was approved, in the counter affidavit filed in this Court, a false statement was made to the effect that the petitioner was never asked to enquire into the said episode nor was any report filed by him on 3-7-1998 as claimed by him.

26. When the file relating to the above said issue was perused, it came to light that the petitioner did file a report on 3-7-1998. Though the petitioner would claim that he made specific allegations against the then Commissioner, the report does not reflect such a clear cut allegation as against the said officer. The petitioner has only concluded in that report that the sanction for a sum to an extent of more than Rs.11 lakhs was accorded for developmental activities in the said layout without getting proper approval of the higher authorities. The petitioner also claimed that based on the said report and other proceedings, criminal action has been initiated against all officers concerned including the then Commissioner of Coimbatore City Corporation.

27. In the absence of necessary supporting materials forth coming either from the petitioner or from the respondents, I am not able to come to a definite conclusion as regards the allegations made by the petitioner except stating that the petitioner did submit a report as regards the said 'Varadarajuly Nagar lay out' on 3-7-1998. Based on the said averment, the petitioner would contend that the Enquiry was reopened with a view to victimise the petitioner and therefore, the whole disciplinary proceedings should be set at naught. It is also claimed that when once it is established that the conversation as between the petitioner and the Enquiry Officer was proved, which also disclosed that the findings of the Enquiry Officer was not the one prepared by the Enquiry Officer himself, but was prepared by the counsel for the Corporation and therefore, that would also show total lack of bona fide on the part of the Corporation and others representing the Corporation.

28. Here again, it will have to be held that even though the conversation as between the petitioner and the Enquiry Officer has turned out to be real one, yet merely based on the ipse dixit statement of the Enquiry Officer, that the report was prepared by the counsel for the Corporation and on that basis alone, it cannot be held that there is no scope to proceed against the petitioner by way of disciplinary action. All these allegations, in my opinion, would not vitiate the whole disciplinary proceedings. In fact, the above allegations were all subsequent in point of time, while the charge sheet issued to the petitioner was as early as on 13-12-1997 in relation to a complaint made by certain persons in August, 1997. Further, in the complaint very serious allegation of demand of bribe to the tune of fifty thousand rupees has been made. It is also borne out by record that the petitioner was really involved in the sanctioning of the layout with reference to which the allegation of demand of bribe was made. Therefore, the allegation which resulted in the framing of the charge sheet as against the petitioner requires to be enquired into in order to find out as to whether those charges are really made out. In my view, the various discrepancies and pitfalls pointed out in the enquiry proceedings as well as in the conduct of the then Commissioner of Coimbatore Corporation and the Enquiry Officer would at best vitiate only the record of that part of the enquiry proceedings and that would

not vitiate the whole disciplinary proceedings.
29. In this context, while relying upon the judgment referred to earlier, the learned senior counsel would contend that the whole disciplinary proceedings should be set aside and the petitioner be allowed to resume his duties without any further action. When the Judgment reported in "AIR 1969 SC 48 (ORIENT PAPER MILLS LTD. Versus UNION OF INDIA)" is perused, I find that it only points out that any authority which is placed on a higher pedestal cannot control the proceedings of the lower authority who is ordained to exercise quasi judicial power. Therefore, even applying the said ratio to the case on hand, at best, the report of the Enquiry Officer or for that matter, the enquiry proceedings recorded by the Enquiry Officer may get vitiated inasmuch as he had conceded to the effect that he did not take a decision as to the examination of the witnesses whom the petitioner wanted to examine on his side and in view of the fact that the report itself was not prepared by him. On that score, it cannot be held that the very initiation of the disciplinary proceedings against the petitioner would get vitiated.
30. Again in the judgment of the Hon'ble Supreme Court reported in "1999(3) SCC 679 (CAPT.M.PAULANTHONY versus BHARAT GOLD MINES LTD. AND ANOTHER)", the Hon'ble Supreme Court only dealt with the situation as to how when a criminal proceedings and departmental action are proceeded with as against delinquent. In my view, the said decision can have no application to the facts of the case. Therefore, I do not find any scope to apply the ratio of the said decision also to the case on hand.
31. As far as the other decision, namely, the one reported in "AIR 1996 SC 1669 (STATE BANK OF PATIALA AND OTHERS versus S.K.SHARMA)", I feel that before referring to the said decision, it would be appropriate to refer to the other Constitutional Bench decision of the Hon'ble Supreme Court reported in "AIR 1994 SC 1074 (MANAGING DIRECTOR, ECIL, Hyderabad, ETC., ETC., versus B.KARUNAKAR, ETC., ETC.,)". In the majority view, in the said judgment in paragraph 6, the Hon'ble Supreme Court have set out a general principle which would be applicable to all cases relating to disciplinary proceedings which is to the following effect:-

"6. .....In Chairman, Board of Mining Examination V. Ramjee (1977) (2) SCR 904, the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

31. In fact, in "AIR 1996 SC 1669 (STATE BANK OF PATIALA versus S. K.SHARMA)", the Hon'ble Supreme Court have also made a reference in this very judgment while setting out the principles to be followed in

paragraph 32 of the said Judgement, in sub para 4(b), it has been held as under:

"32. 4(b). In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employer has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B.Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called."

(Underlining is mine)

32. In the case on hand, it will have to be held that the violations complained of by the petitioner did really cause very serious prejudice to the petitioner as regards the vindication of his stand as against the charges levelled against him. Therefore, it is imperative that the petitioner is given due and fair opportunity to put forth his stand and also permitted to meet the allegations and the evidence placed in support of such allegation to be made available to him in order to meet those allegations squarely and prove his innocence. Therefore, there can be no two opinion that all opportunities that are to be extended to the petitioner in the enquiry should be made available to him.

33. Therefore, what is now left is as to directions to be issued while setting aside the orders impugned in the Writ Petition while directing the respondents to proceed with the enquiry from the stage subsequent to the issuance of the charge sheet. In this context, I wish to be guided by the law laid down by the Hon'ble Supreme Court in " ECIL case" (AIR 1994 SC 1074) referred to above, wherein, in para 7, the Hon'ble Supreme Court, while dealing with the failure of the Disciplinary Authority in not furnishing the Enquiry Officer's report which vitiated the enquiry directed as to how the Disciplinary Authority can be asked to proceed with the enquiry. The said direction of the Hon'ble Supreme Court is contained in para 7(v), which is to the following effect:

"7(v). Where after following the above procedure, the Courts/ Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a

result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. The will also be the correct position in law."
The above direction of the Hon'ble Supreme Court, in my opinion, can be applied even to the case on hand.
34. The general rule relating to disciplinary action, (viz.,)
Rule 36 of the Tamil Nadu Municipal Corporation Service Rules, 1996 mentions that 'in the matters in respect of which no provision has been made in these rules, every member of the service shall as nearly as possible, be governed by the provisions applicable to Government Servants of similar status and standing'. It was also brought to my notice that as per Rule 12 of the Coimbatore City Municipal Corporation Service (Discipline & Appeal) Rules 1986, when a penalty of dismissal, removal or compulsory retirement is set aside by a Court of law, such member of a service should be deemed to have been placed under suspension by the Appointing Authority from the date of original order of dismissal, and yet continue to remain under suspension until further orders. Under Rule 9 of the above said Rules, power of the Corporation to place an employee under suspension as well as provisions for payment of subsistence allowance during the pendency of the disciplinary proceedings, is provided. Nevertheless as to in what manner, the payment of wages or subsistence allowance should be made is not specifically provided in either of the above said Rules. In such circumstances, a combined reading of the above referred to Rules would only result in the application of FR 53 to 54(A) for the purpose of deciding as to how the pay and allowance to the petitioner are to be governed during the pendency of the disciplinary proceedings subsequent to any remedial measures to be ordered in these Writ Petitions.
35. In the light of my above said conclusions, while setting aside the orders impugned in these Writ Petitions, I direct the second respondent-Corporation to proceed afresh subsequent to the stage of issuance of the charge sheet dated 13-12-1997 and proceed according to law after affording due opportunity to the petitioner. By virtue of this order, since the disciplinary proceedings are restored, the restoration of the petitioner's service in the second respondentCorporation having become imperative, the consequential application of the above referred to rules come into play. The second respondent shall therefore, pass appropriate orders as regards the payment of pay and allowance to be paid to the petitioner within two weeks from the date of receipt/production of a copy of this order, while ordering for continuation of the disciplinary proceedings as directed above.
36. Apart from giving the above said directions, while setting aside the impugned orders, I also feel it appropriate to compensate the petitioner by directing the second respondent-Corporation in the first instance to meet the expenses incurred by the petitioner for finding out the truth relating to the recordings of conversation as between the petitioner and the Enquiry Officer. After the Division Bench Judgment dated 9-11-1999 in W.A.No.2031 of 1999, the respondentCorporation was directed to consider the claim of the petitioner as regards the recorded conversation that took place between him and the Enquiry Officer. Unfortunately, the second respondent-Corporation merely rejected the contention of the petitioner by stating that the Forensic Laboratory, Chennai were not inclined to test the

correctness of the conversation contained in the audio cassette. If really, the second respondent-Corporation was genuine in its attempt, the Forensic Laboratory, Chennai being another wing of the State Government, nothing could have prevented the second respondent-Corporation from taking all earnest efforts in finding out the truth especially when the Division Bench in the order dated 9-11-1999 made it clear that that was a very relevant factor to be considered in the matter of the ultimate decision to be taken by the second respondent-Corporation. Therefore, the second respondent-Corporation has failed in its duty in performing its functions expected of it. However, at the instance of the petitioner, this Court had to take all measures to find out the truth at the costs of the petitioner to the tune of Rs.95,000/- which was paid by way of fee to the Advocate-Commissiner, as well as, to the authorities of the Indian Institute of Technology apart from the mental agony suffered by the petitioner. The monetary expenditure to such an extent at the instance of the petitioner could have been avoided if the second respondent-Corporation had acted in a prudent manner while dealing with the explanation submitted by the petitioner when he wanted the Corporation authorities to consider the audio cassette presented by him. Therefore, I feel that the Corporation should bear all the above said expenses which has now brought out that the stand of the petitioner based on the said audio cassette was true which was the main ground for setting aside the orders impugned in these Writ Petitions.

37. In the result, the Writ Petitions are allowed with the directions mentioned in the previous paragraphs and also with a further direction to the second respondent-Corporation to compensate the petitioner by paying a sum of Rs.95,000/- within a period of four weeks from the date of receipt of copy of this order. However, since the audio cassette recordings had proved that the Enquiry Officer has acted in a dishonest manner in not discharging h is functions expected of him, I feel it appropriate to permit the second respondent-Corporation to recover atleast 50% of the above said expenses from the Enquiry Officer. It is also directed that the disciplinary proceedings shall be commenced and concluded within a period of three months from the date of production/receipt of a copy of this order. No costs.

The Telephone and cassettes shall be returned to the petitioner after the appeal time is over.

Index: Yes
Internet: Yes

suk

To

1. The Chairman,
The Appeals Committee,
Coimbatore City Municipal Corporation,
Coimbatore.

2. The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

3. Karthikeyan, I.A.S.,
Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

4. A.Rajendra Kumar, I.A.S.,
formerly Commissioner,
Corporation of Coimbatore,
now Chief Executive Officer,

Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Chennai-600 008.

5. Dr.Subramani,
Formerly City Health Officer,
Enquiry Officer,
Corporation of Coimbatore,
now Deputy Director of Health Services,
Salem.

6. The Secretary to Government,
Municipal Administration &
Water Supply Department,
Fort St.George, Chennai-9.

Suk